



PATENT

AF#

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Nir N. Shavit et al.

Title: MAINTAINING A DOUBLE-ENDED QUEUE IN A CONTIGUOUS  
ARRAY WITH CONCURRENT NON-BLOCKING INSERT AND  
REMOVE OPERATIONS USING A DOUBLE COMPARE-AND-SWAP  
PRIMITIVE

Application No.: 09/547,288

Filed: April 11, 2000

Examiner: Aimee J. Li

Group Art Unit: 2183

Atty. Docket No.: 004-4663

Confirmation No.: 4871

May 6, 2005

Mail Stop AF  
COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450

## PETITION FOR EXTENSION OF TIME

This is a petition under the provisions of 37 CFR 1.136(a) to extend the period for filing a  
response in the above-identified application. The requested extension and appropriate Fee are:

- ☒ Two month extension
- ☒ Fee (37 CFR 1.17(a)): ..... \$450
- ☐ Applicant has previously extended the period for filing the  
response by n/a month(s). Therefore the remaining fee amount  
under the 37 CFR 1.17(a) to extend the period for a total of  
n/a month(s) is: ..... n/a.
- ☐ Applicant is a Small Entity. Therefore the amount shown above is reduced by  
one-half, and the resulting Fee is: ..... n/a.

Payment is by:

- ☒ Check: An enclosed check includes the Fee.
- ☐ Deposit Account: Please charge the Fee to Deposit Account Number: n/a.
- ☒ The Commissioner is hereby authorized to charge any deficiency in fees and any  
additional fees which may be required, or credit any overpayment, to Deposit

15/18/2005 DWYATT 00000001 00000001 09547288 50-0631.

11/22/2005 DWYATT 00000001 09547288

FC:1252 450.00 00

diff 570

1253

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Application No.: 09/547,288

Adjustment Date: 06/28/2005 SDIRETA1  
05/18/2005 DWYATT 00000001 500631 09547288  
01 FC:1253 570.00 CR

**ZAGORIN O'BRIEN GRAHAM LLP**

7600B N. CAPITAL OF TEXAS HWY, SUITE 350  
AUSTIN, TEXAS 78731-1191

INTELLECTUAL PROPERTY ATTORNEYS

512-338-6300 (TEL)  
512-338-6301 (FAX)

INTERNET: [www.ip-counsel.com](http://www.ip-counsel.com)

May 25, 2005

**VIA FACSIMILE (Fax: 703-308-6778)**

Office of Finance  
Refund Section  
P.O. Box 16  
Washington D.C. 20231

RE: Deposit Account No. 500631

Dear Sir or Madam:

On May 6, 2005, our firm filed a Notice of Appeal requesting a two-month extension of time (*copy enclosed*) in Application No. 09/547,288. In an Interview Summary dated March 30, 2005 (*copy enclosed*), the Examiner acknowledged and corrected an error she made in a previous paper (Advisory Action before the Filing of an Appeal Brief) mailed March 7, 2005, giving applicant a response time as the date of the Advisory Action, rather than 3 months from the mailing date of the final rejection (*copy enclosed*).

In our recent Deposit Account statement, however, we noticed a charge was made against the above-identified application in the amount of \$570 under fee code 1253 (*Extension for response within third month*). Since the proper fee was included with the filing of the Notice of Appeal, there should have been no additional fees necessary.

We, therefore, respectfully request that you credit our deposit account no. 50-0631 in the amount of \$570 to refund the erroneous charge as soon as possible.

If you have any questions or require additional information or documentation, please contact my assistant, Peggy S. Pepitone or me.

Very truly yours,



Steven R. Gilliam (Reg. No. 51,734)

/psp

Enclosures: as stated

**ZAGORIN O'BRIEN GRAHAM LLP**7600B N. CAPITAL OF TEXAS HWY, SUITE 350  
AUSTIN, TEXAS 78731-1191

INTELLECTUAL PROPERTY ATTORNEYS

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INTERNET: www.ip-counsel.com

May 6, 2005

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicant: Nir N. Shavit et al.  
 Title: MAINTAINING A DOUBLE-ENDED QUEUE IN A CONTIGUOUS ARRAY  
 WITH CONCURRENT NON-BLOCKING INSERT AND REMOVE  
 OPERATIONS USING A DOUBLE COMPARE-AND-SWAP PRIMITIVE  
 Application No.: 09/547,288 Filed: April 11, 2000  
 Examiner: Aimee J. Li Group Art Unit: 2183  
 Atty. Docket No.: 004-4663 Conf. No.: 4871

Dear Sir:

Transmitted herewith are the following documents in the above-identified application:

- ☒ Notice of Appeal (1 page(s))
- ☒ Petition for Extension of Time (2 month) (2 page(s))
- ☐ Information Disclosure Statement ( page(s)), including PTO/SB0/8A and/or  
PTO/SB/08B ( page(s)), and copies of reference(s)
- ☐ Other: ( page(s))
- ☐ Other: ( page(s))
- ☐ Other: ( page(s))
- ☒ Transmittal Letter (2 page(s));
- ☒ Return postcard;

The Total Fee has been calculated as shown below:

	Pending Claims	Claims Previously Paid	Extra Claims	Fees
Total Claims		- 43 =	0 x \$50.00 =	0.00
Independent Claims		- 10 =	0 x \$200.00 =	0.00
Multiple Dependent Claims (if any) - \$360.00 fee				
Additional Claims Fee				\$ .00
Fee For Extension Of Time				\$ 450.00
Other Fees: (Notice of Appeal)				\$ 500.00
<b>TOTAL FEE DUE:</b>				<b>\$ 950.00</b>

- ☐ Small entity status is entitled to be asserted for the application.
- ☒ A check is enclosed for the Total Fee shown above.
- ☐ Please charge the Total Fee shown above to Deposit Account 50-0631.
- ☒ The Commissioner is hereby authorized to charge any deficiency in fees and any additional fees under 37 C.F.R. § 1.16 or 1.17, that may be required during the pendency of this application, and to similarly credit any overpayment, to Deposit Account 50-0631.

Notice of Appeal PTO Transmittal Letter.doc

Client Reference No.: P4663-US-NP

ZAGORIN O'BRIEN GRAHAM LLP

May 6, 2005  
RE: 09/547,288  
Page 2 of 2

**CERTIFICATE OF MAILING OR TRANSMISSION**

I hereby certify that, on the date shown below, this correspondence is being

- ☒ deposited with the US Postal Service with sufficient postage as first class mail and addressed as shown above.  
☐ facsimile transmitted to the US Patent and Trademark Office.

  
Steven R. Gilliam

6-May-2005  
Date

Respectfully submitted,



Steven R. Gilliam, Reg. No. 51,734  
Attorney for Applicant(s)  
(512) 338-6320  
(512) 338-6301 (fax)

EXPRESS MAIL LABEL: \_\_\_\_\_

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Nir N. Shavit et al.

Title: MAINTAINING A DOUBLE-ENDED QUEUE IN A CONTIGUOUS  
ARRAY WITH CONCURRENT NON-BLOCKING INSERT AND  
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PRIMITIVE

Application No.: 09/547,288

Filed: April 11, 2000

Examiner: Aimee J. Lee

Group Art Unit: 2183

Atty. Docket No.: 004-4663

Confirmation No.: 4871

May 6, 2005

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**NOTICE OF APPEAL FROM THE EXAMINER TO THE BOARD OF  
PATENT APPEALS AND INTERFERENCES**

Applicant(s) hereby appeal(s) to the Board of Patent Appeals and Interferences from the  
last decision of the Examiner.

The fee for this Notice of Appeal under 37 C.F.R. § 41.20(b)(1) is submitted as set forth  
in the accompanying transmittal letter.

**CERTIFICATE OF MAILING OR TRANSMISSION**I hereby certify that, on the date shown below, this  
correspondence is being

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as first class mail and addressed as shown above.  
☐ facsimile transmitted to the US Patent and Trademark Office.

  
Steven R. Gilliam6-May-2005  
Date

Respectfully submitted,

Steven R. Gilliam, Reg. No. 51,734  
Attorney for Applicant(s)  
(512) 338-6320  
(512) 338-6301 (fax)

EXPRESS MAIL LABEL: N/A

PATENT

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Applicant(s): Nir N. Shavit et al.

Title: MAINTAINING A DOUBLE-ENDED QUEUE IN A CONTIGUOUS  
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COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, VA 22313-1450**PETITION FOR EXTENSION OF TIME**

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- ☒ Two month extension
- ☒ Fee (37 CFR 1.17(a)): ..... \$450
- ☐ Applicant has previously extended the period for filing the response by n/a month(s). Therefore the remaining fee amount under the 37 CFR 1.17(a) to extend the period for a total of n/a month(s) is: ..... n/a.
- ☐ Applicant is a Small Entity. Therefore the amount shown above is reduced by one-half, and the resulting Fee is: ..... n/a.

Payment is by:

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- ☐ Deposit Account: Please charge the Fee to Deposit Account Number: n/a.
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- 1 -

2 mo ext of time notice of appeal.doc

Application No.: 09/547,288

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I hereby certify that, on the date shown below, this correspondence is being

- ☒ deposited with the US Postal Service with sufficient postage as first class mail and addressed as shown above.  
☐ facsimile transmitted to the US Patent and Trademark Office.

  
Steven R. Gilliam

6-May-2005  
Date

Respectfully submitted,



Steven R. Gilliam, Reg. No. 51,734

Attorney for Applicant(s)

(512) 338-6320

(512) 338-6301 (fax)

EXPRESS MAIL LABEL: \_\_\_\_\_

- 2 -

2 no ext of time notice of appeal.doc

Application No.: 09/547,288

ZAGORIN O'BRIEN &amp; GRAHAM, LLP.

SPG  
DOCKETED

APR 04 2005

APR 04 2005



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,288	04/11/2000	Nir N. Shavit	1004-4663	4871
22120	7590	03/30/2005	EXAMINER	
ZAGORIN O'BRIEN GRAHAM LLP 7600B N. CAPITAL OF TEXAS HWY. SUITE 350 AUSTIN, TX 78731			LI, AIMEE J	
			ART UNIT	PAPER NUMBER
			2183	

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



<b>Interview Summary</b>	Application No.	Applicant(s)	
	09/547,288	SHAVIT ET AL	
	Examiner	Art Unit	
	Aimee J Li	2183	

All participants (applicant, applicant's representative, PTO personnel):

(1) Aimee J Li (3) \_\_\_\_\_

(2) Steven Gilliam (Reg. No. 51,734) (4) \_\_\_\_\_

Date of Interview: 18 March 2005

Type: a) ☒ Telephonic b) ☐ Video Conference  
c) ☐ Personal [copy given to: 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No.  
If Yes, brief description: \_\_\_\_\_

Claim(s) discussed: N/A

Identification of prior art discussed: N/A

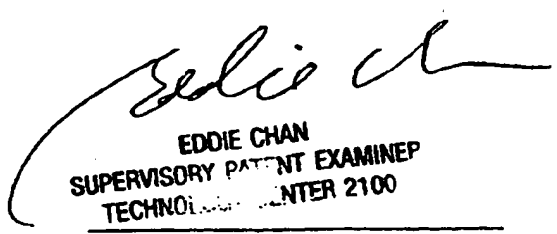
Agreement with respect to the claims f) ☐ was reached. g) ☐ was not reached. h) ☒ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant's representative, Mr. Gilliam, wished clarification and confirmation that the Advisory Action's time period box, i.e. the box indicating when the next action was due, meant to have option "b" checked, not option "a" as the Advisory Action has checked. Examiner agreed that option "b" should have been checked and apologized for the mistake.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

  
EDDIE CHAN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

Examiner's signature, if required

## Summary of Record of Interview Requirements

**Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record**  
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

### 37 CFR § 1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.



UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED  
DOCKETED ZAGORIN O'BRIEN & GRAHAM, LLP

MAR 10 2005

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/547,288	04/11/2000	Nir N. Shavit	1004-4663	4871
22120	7590	03/07/2005	EXAMINER	
ZAGORIN O'BRIEN GRAHAM LLP 7600B N. CAPITAL OF TEXAS HWY. SUITE 350 AUSTIN, TX 78731			LI, AIMEE J	
			ART UNIT	PAPER NUMBER
			2183	

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# **Advisory Action** **Before the Filing of an Appeal Brief**

Application No.

09/547,288

Applicant(s)

SHAVIT ET AL.

Examiner

Aimee J Li

Art Unit

2183

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**THE REPLY FILED 19 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

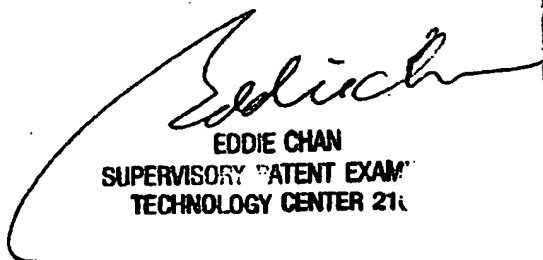
## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
Please see the attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation Sheet (PTOL-303)

Application No.

Applicant argues in essence on pages 3-4 "The Office states that the prevention of a second interfering thread was not claimed. However, the subject matter of Applicant's claims prevents a second intervening thread." This has not been found persuasive. Arnold has taught that the claimed method. Referring to Figure 6 of Arnold, element 102 shows that an empty state of the queue is checked for before the compare and swap can be performed. Should the queue be empty, the compare and swap is not executed, i.e. failed to execute. Figure 6 shows that checking whether a queue is empty or not occurs when the atomic nature of the operation is already set, i.e. with the load operation. When an atomic area of operation is entered, the atomic nature is held until an unlock is performed. The device would not operation properly otherwise, since race conditions, i.e. conditions when two operations that conflict try to access the queue at once, would occur. In this case, if checking whether the queue is empty or not is not atomic, then checking for whether the queue is empty could happen at the same time as something trying to add to the queue. If this were to happen, inaccurate results would occur and the data would become corrupt. Also, the claim language of the claim gives no indication that the threading alluded to in the arguments is present in the invention. The claim language merely states that there is an atomic dual target compare and swap function that performs certain tasks. The closest that the claim language comes to insinuating a threading environment is the language in the preamble, which states "an array susceptible to concurrent operations". This does not necessarily mean threads are present, as alluded to in the arguments. Firstly, the language "susceptible" only stipulates that concurrent operations may be present, not that they are present. Secondly, concurrent operations does not necessarily means threads. Concurrent operations can mean a superscalar device, which executes multiple instructions from one thread simultaneously. Thirdly, the language is in the preamble and is not given patentable weight



EDDIE CHAN  
SUPERVISORY PATENT EXAM  
TECHNOLOGY CENTER 21

**ZAGORIN O'BRIEN GRAHAM LLP***Intellectual Property Attorneys*7600B N. CAPITAL OF TEXAS HWY., SUITE 350  
AUSTIN, TEXAS 78731

TEL: (512) 338-6300

FAX: (512) 338-6301

INTERNET: [www.IP-Counsel.com](http://www.IP-Counsel.com)**FACSIMILE MESSAGE TRANSMITTAL**

<b>TO:</b>	USPTO - Deposit account	<b>PHONE #:</b>	
<b>FROM:</b>	Steven R. Gilliam	<b>DATE:</b>	May 25, 2005
<b>CC:</b>		<b>CC FAX #:</b>	
<b>SUBJECT:</b>	Request for Refund to Deposit Account 50-0631		
<b>YOUR REF:</b>	09/547,288	<b>OUR REF:</b>	004-4663
<b>FACSIMILE #:</b>	(703) 308-6778	<b>PAGES:</b>	13 (including this transmittal)

**MESSAGE**

Please see attached

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